

# **EXHIBIT A**

**Defendants Rose Acre Farms, Inc.'s Memorandum in Opposition to  
Plaintiffs' Motion to Exclude the Testimony of Dr. Jesse David**

**Case No. 1:11-cv-08808**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3

4                   IN RE: PROCESSED EGG PRODUCTS:                 MDL NO. 2002  
5                   ANTITRUST LITIGATION                             08-MDL-02002

6                   - - - - -  
7                   PHILADELPHIA, PA  
8                   - - - - -  
9                   DECEMBER 4, 2019  
10                  - - - - -  
11  
12                  BEFORE:                 THE HONORABLE GENE E.K. PRATTER, J.  
13  
14                  - - - - -  
15                  TRANSCRIPT OF TRIAL PROCEEDINGS  
16                  DAY 20  
17                  - - - - -  
18  
19  
20  
21                  KATHLEEN FELDMAN, CSR, CRR, RPR, CM  
22                  Official Court Reporter  
23                  Room 1234 - U.S. Courthouse  
24                  601 Market Street  
25                  Philadelphia, PA 19106  
                    (215) 779-5578

(Transcript Produced By Mechanical Shorthand Via C.A.T.)

1       that?

2       A. I mean, that certainly seems like it. I don't know that  
3       I've seen this document before, but I think -- you know, I  
4       think I do -- I can read it and I think you've characterized  
5       it accurately.

6       Q. Okay, thank you. You understand, don't you, that the  
7       impact of Rose Acre joining the Certified Program meant fewer  
8       chickens for the existing cages at Rose Acre, right?

9       A. Right. Because you've got to make more space in the  
10      cages, yes.

11      Q. And fewer chickens in those cages -- in the existing  
12      cages, fewer chickens in the existing cages meant fewer eggs,  
13      right?

14      A. From those chickens.

15      Q. Right. Now, I understand that you don't have an opinion  
16      in this case on whether Rose Acre reached an agreement with  
17      any of its competitors to reduce supply, right?

18      A. In terms of, did they sign something or did they have  
19      some oral agreement or something like that, I don't have an  
20      opinion. My opinion is about whether what they did is  
21      consistent with an agreement to reduce supply. But whether  
22      there was an agreement, I don't know.

23      Q. You would agree with me that the question of whether  
24      there was an agreement or not is actually one for the jury,  
25      right?

1 A. Sure.

2 Q. It's not a question for you and me to answer.

3 A. I don't have an opinion about whether there was an  
4 agreement.

5 Q. Okay. Do you recall reviewing Mr. Rust's testimony about  
6 this document, PX-712, that we just looked at together?

7 A. As I sit here right now, no, I don't.

8 Q. Okay. Do you recall, possibly if I refresh your  
9 recollection, that he testified here before the jury that he  
10 understood that every other member of the Certified Program  
11 had entered into the same written agreement with the UEP? Do  
12 you recall that?

13 A. I don't recall those -- those words.

14 Q. Okay, let's look at it together.

15 MR. GERMAINE: Permission, Your Honor?

16 THE COURT: Yes.

17 MR. GERMAINE: Thank you.

18 BY MR. GERMAINE:

19 Q. So what I've just handed you, Dr. David, is a copy of the  
20 transcript from this trial on November 13, 2019. If you turn  
21 to page 70, line 18.

22 A. Okay.

23 Q. My colleague, Mr. Slater, was asking Mr. Rust some  
24 questions about this agreement -- it happens a few pages back.  
25 And Mr. Slater says: So this was an agreement between you and